IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 545 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHOKBHAI AMBALAL RAVAL & 3 - Petitioner(s)

Versus

DIRECTOR MUNICIPALITIES GUJARAT STATE & 1 - Respondent(s)

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Appearance :

MR NV SOLANKI for Petitioner(s) : 1 - 4.

GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 04/02/2006

ORAL JUDGMENT

1.In the present petition, the petitioners have challenged an order dated 17-06-2002 passed by the Director of Municipalities, Government of Gujarat,Gandhinagar. The petitioners were councillors of Gathlodia Nagarpalika. During their tenure, the Nagarpalika had made certain purchases of Sodium Hypo

Chloride. For this purpose tenders were called for from the interested persons. The Director finding that the Executive Committee of the Nagarpalika while finalising the tenders had committed certain irregularities, issued a show cause notice dated 01-10-1999. This show cause notice was issued to all the members of the Executive Committee of the Nagarpalika including the petitioners. The notice was under section 70 of the Gujarat Municipalities Act, (here-in-after referred to as “the said Act”). It was alleged inter-alia that Executive Committee had floated a tender for purchase of pesticides of Sodium Hypo Chloride. It was alleged that though the rates quoted by one A.R. Marketing were the highest, offer of the said party was accepted. The resolution to this effect was passed on the meeting of the Executive Committee dated 31-05-1999. It was further alleged that rates quoted by A.R. Marketing was costlier by Rs. 4.76 per litre. On account of this purchase, therefore, Nagarpalika had to suffer a loss of Rs.70,000/-. It was alleged that this was done to cause unlawful gain to A.R. Marketing for which all the members had assisted. The petitioners and other members of the Nagarpalika were called upon to show cause why the said loss caused to the Nagarpalika should not be

recovered from them.

2.The petitioners replied to the show cause notice. The petitioner no.2 who was the then chairman of the Executive Committee of the Gathlodia Nagarpalika made a detailed representation dated 29-11-1999. The other petitioners had also filed their replies. However, since the reply of the petitioner no.2 dated 29-11-1999 covered all the aspects of the matter, the same may be referred to as the reply of the petitioners. After considering the representation made by the petitioners and after considering the material on record,the Director was pleased to pass his order dated 17-06-2002. In the said order, he concluded that the petitioners were responsible for causing loss to the Nagarpalika to the tune of Rs. 70,000/-. That the Executive Committee of the Nagarpalika erred in awarding the contract in favour of A.R. Marketing though rate offered by them was costlier by Rs. 4.76 per litre. It was found that all the members of the Executive Committee had retired in the meantime. The action of removing them as Councillors was therefore, dropped. However, pursuant to power conferred in section 70 of the said Act, he ordered recovery of

Rs.70,000/- proportionately from all the members of the Executive Committee including the petitioners except one Smt. Kalpnaben M. Patel, since it was found that she had opposed the resolution through which the contract was awarded to A.R. Marketing.

3.The petitioners are aggrieved by the order passed by the Director of Municipality and, therefore, have filed the present petition. Though, the learned AGP Ms. Falguni Patel urged that order of the Director of Municipality is appealable before the District Court in terms of Subsection(4) of Section 70 of the said Act, I do not find it appropriate to relegate the petitioners to alternative remedy at the stage of final hearing of the petition when once this Court had after hearing both the sides admitted the petition. Therefore, adverting to the issues arising in the present petition, it can be seen that the allegations made against the petitioners and other members of the Executive Committee were that for purchasing a certain pesticide namely Sodium Hypo Chloride, tenders were invited. From the record, it can be seen that seven different suppliers quoted their rates. The rates of A.R. Marketing at Rs. 10 per litres was not the lowest.

There were four other tendered who had offered rates of Rs.5.24/- per litre, Rs.8/- per litre , Rs.5.35 per litre, Rs.5/- per litre. There was one supplier by the name Poonam who had quoted a rate of Rs.15/- per litre. Thus, rate offered by A.R. Marketing was second highest. As many as four other suppliers had quoted the rates nearly half that much. Despite this, tender of A.R. Marketing was accepted and four others were rejected. In the show cause notice, it was specifically stated that this was done to cause gain to A.R. Marketing. This apparently therefore, had an element of doubtful integrity against the petitioners. What was sought to be suggested was that they had accepted an offer of higher rate ignoring offers made by other contractors to supply the same product at low rates. The allegations against the petitioners and other members of the executive committee were sufficiently clear.

4. In a detailed reply filed by the petitioner no.2, several contentions were raised before the authority. However, with respect to the reason for finalising the tender at a much higher rate than four other tenderers, all that was stated was that A.R. Marketing was

supplying better quality product. There is nothing further on record to substantiate this averment. No material is placed on record to suggest that the Committee undertook some cogent exercise to come to such conclusions. It is true as suggested by the learned advocate for the petitioners that for finalising the tenders, the executive committee had a certain degree of discretion and it was not always necessary to accept only lowest rate offered even while ignoring the quality of the product, the reliability of the supplier and such other relevant considerations. However, such consideration cannot be in the abstract. Same must be reflected from the material on record. It cannot be ipsi dixit of the petitioners to suggest that A.R. Marketing was going to supply better quality product and other tenderers who had quoted nearly half that amount were going to supply inferior quality product. This has to be pleaded and proved on record. When the executive committee was spending public money,it was necessary that same should be spent with caution and for good reasons. The tender of A.R. Marketing at much higher rates than four other tenderers, could not have been accepted without there being sufficient material on record. To justify such an

action to reject the lower offers which were as many as four in number and to accept the tender at a much higher rate, Executive Committee had to have strong reasons. No reasons are forthcoming on record. Bare statement that the quality that A.R. Marketing was going to supply was superior would not be sufficient.

5. In the result I find that the petitioners completely failed to justify the purchase made by the Executive Committee at much higher rate. I am unable to agree with the learned advocate for the petitioners that the Director erred in accepting the allegations against the petitioners as proved.

6. The learned advocate for the petitioner strongly urged that under section 70 of the said Act, Director had no such power. Section 70(1) of the said Act reads as follows :

> “70(1) Every councillor shall be personally liable for the misapplication of any fund to which he shall have been a party, or which shall have happened through or been facilitated by gross neglect of his duty as a councillor:
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> Provided that no councillor shall be personally liable in respect of any contract or agreement made, or for any expense incurred by, or on behalf of the municipality; the funds at the disposal of each municipality shall be liable for, and be charged with, all costs in respect of any contract

or agreement and all such expenses."

7. It can thus be seen that a councillor of municipality can be held personally liable to misapplication of any fund to which he has been a party. In the present case admittedly the petitioners were members of the executive committee. The petitioners took active part in finalising the terms and conditions of the contract which resulted into spending of Rs. 70,000/- more than necessary. Under subsection(1) of section 70 of the said Act, therefore, the petitioners were correctly held to be personally liable. I do not find that the case of the petitioners would fall in the purview of proviso to subsection (1) of section 70 of the said Act. The same operates vastly in a different field. When there has been a clear case of misapplication of fund of the Municipality, petitioners cannot escape the liability thereof since subsection(1) of section 70 of the said Act is sufficiently clear in this regard.

8. I do not find that there is any interference called for. The petition is therefore rejected. Rule is discharged. Interim relief is vacated.

(Akil Kureshi,J.)

(raghu)